

Deposition Designations for:

RICHARD FINKE
May 13, 2009

Deposition Designation Key

CI = Certain insurers (green)

**CNA = Continental Cas. Co &
Continental Ins. Co. (red)**

PP's = Plan Proponents (blue)

Obj: = Objection

Ctr = Counter Designation

R = Relevance

BE = Best Evidence

F = Foundation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11

Case No.
01-01139 JKF
W.R. Grace & Co., et al.,

Debtors. (Jointly Administered)

X

* * * CONFIDENTIAL * * *

— — —
May 13, 2009
— — —

DEPOSITION of RICHARD FINKE, held
at the offices of Kirkland & Ellis, 655
Fifteenth Street, N.W., Washington, DC,
commencing at 9:32 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified Court
Reporter, License No. XI00825, and
Certified Realtime Reporter

— — —
MAGNA LEGAL SERVICES, LLP

7 Penn Center, 8th Floor
1635 Market Street
Philadelphia, PA 19103

Key

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RICHARD FINKE,
having been sworn by the Notary
Public of the States of New York
and New Jersey, was examined and
testified as follows:

EXAMINATION BY
MR. BROWN:

Q. Good morning, Mr. Finke.
My name is Michael Brown. I represent One
Beacon, Seaton, Geico and Republic for the
objecting insurance companies in the Grace
bankruptcy. You've been deposed several
times before, correct?

A. Yes, I have.

Q. Okay. So we can dispense
with the formalities of what a
deposition's all about?

A. Yes, we can.

Q. Okay.

MS. HARDING: Michael,
would you mind if I made a quick
statement on the record?

MR. BROWN: Sure.

MS. HARDING: I just wanted
to make a statement on the record
that the debtors have designated
Mr. Finke to answer certain
appropriate questions related to
certain 30(b)(6) topics.

As we've indicated, Mr.
Finke will be available for seven
hours today. We've also designated
Mr. Hughes and Mr. LaForce to
answer other 30(b)(6) topic
questions. We are hoping and
expecting that the parties seeking
to ask questions have coordinated
so that we can end in seven hours
and we think it's a reasonable
expectation.

The debtors have reviewed
the deposition of Mr. Lockwood and
agree, in essence, with Mr.
Lockwood's answers with respect to
how the Plan operates and so we
think and are very hopeful that
there will not be a need to go

further than seven hours to get to
the appropriate inquiry as to how
the Plan operates. So I just
wanted to get that on the record.

MR. BROWN: Okay.
Actually, that's helpful. Maybe I
could follow up with a question for
Mr. Finke.

Q. Mr. Finke, have you
reviewed Mr. Lockwood's Rule 30(b)(6)
deposition transcript?

A. Yes, I have.

Q. Okay. Is there anything
that you read in that transcript that you
disagreed with?

A. No, nothing of substance.

Q. Okay. How about anything
not of substance?

A. There are a few occasions,
I think, where I either would have worded
something differently or where I think Mr.
Lockwood may have been either in error --
might have been in error depending on
whether he was -- depending on the

PP's Obj:

R

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CI

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PP's
Obj:
R

context. Let me give you one example of that.

Q. Sure.

A. He, I think, made a statement at one point where he equated asbestos in place coverage or insurance coverage with the asbestos insurance reimbursement agreements. I believe he said he thought they were the same thing, and perhaps in substance or in concept they are. I'm not an insurance lawyer, but I know that under the Plan definitionally the definition of asbestos (sic) in place insurance coverage specifically excludes asbestos reimbursement agreements from the definition.

Q. Okay.

A. Which would suggest they are not the same.

Q. All right. I'm going to suggest that Miss Alcabas, or one of the people whose issue that is, may want to follow up with you on that point.

before you two exhibits marked -- we're using the term Finke 30(b)(6) 1 and Finke 30(b)(6) 2. For shorthand during the deposition I'll just refer to them as Finke-1 and Finke-2. Could you identify Finke-1 for me, please?

A. It is a Notice of Deposition of Debtors Pursuant to Rule 30(b)(6) served by One Beacon, Seaton, Geico and Columbia.

Q. Going forward, it would be more accurate to refer to Columbia as Republic. I know it says Columbia there. The date on here is April 28th, 2009 and the site is Drinker Biddle & Reath's offices but we obviously changed those by agreement after this was scheduled.

Is it your understanding that you're appearing here today in response to this Rule 30(b)(6) notice?

A. Yes.

Q. And there were several others served on you as well?

A. Correct.

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PP's Obj:
R

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Obj:
R

A. Sure.

Q. But let's pass on that.

Other than what you've just described, is there anything else in Mr. Lockwood's deposition transcript that the debtors disagreed with?

A. Nothing that comes to mind.

MR. BROWN: Okay. Let me have the first exhibit marked, and can we go off the record for a second.

(Off the record.)

(Notice of Deposition of Debtors Pursuant to Rule 30(b)(6) marked for identification as Exhibit Finke-1.)

(Document entitled W.R. Grace/Confirmation Hearing 30(b)(6) Deposition Notice marked for identification as Exhibit Finke-2.)

BY MR. BROWN:

Q. Mr. Finke, I'm going to put

Q. Correct, all right.

If you look at what's been marked as Finke-2, can you identify that for me?

A. It is a chart 18 pages long entitled W.R. Grace/Confirmation Hearing 30(b)(6) Deposition Notice Witness Designations.

Q. Okay. And is it your understanding that this document was prepared by your counsel?

A. Yes, that's my understanding.

Q. And have you seen it before today?

A. Yes.

Q. Okay. And am I correct that it basically lists all the various topics from all the 30(b)(6) notices that were served on Grace and then designates one of, I believe, three individuals to testify about the various topics?

A. I would agree that it includes all 30(b)(6) notices that have

PP's Obj:

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C1

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PP's

Obj:

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1 been served as of the time that the chart
2 was created.

3 MS. HARDING: And I just
4 want to just object to the extent
5 that Exhibit 2 does not include the
6 cover letter that accompanied
7 Attachment A which also set out our
8 objections with respect to the
9 30(b)(6) notices.

10 I have no objection to him
11 answering questions about it; I
12 just wanted to make clear on the
13 record that there was a cover
14 letter that accompanied that.

15 MR. COHN: Which I actually
16 have but I didn't --

17 MR. BROWN: Can we just go
18 off the record a second?

19 (Off the record.)

20 BY MR. BROWN:

21 **Q. Mr. Finke, when we were**
22 **just off the record, we were discussing**
23 **another document, a copy of which I do not**
24 **have and apparently no one else does,**

1 the road of having all the people
2 in this room ask questions about
3 negotiations and draft documents
4 only to draw objections and
5 instructions not to answer.

6 Can we have that same
7 arrangement for this deposition
8 with the understanding that if
9 there subsequently is a ruling by a
10 court that entitles us to discovery
11 on those subjects that the witness
12 would be recalled for that purpose?

13 MS. HARDING: Subject to
14 Judge Fitzgerald ordering the
15 debtors to submit and answer
16 questions to those, then we can
17 have that agreement, yes.

18 MR. COHN: Just for my
19 clarity, in all of these
20 depositions we're talking about the
21 relevance objection instruction
22 that was asserted at Lockwood's
23 deposition that I clarified on the
24 record?

Page 19

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Page 21

PP's

Obj:

R

1 which was described as being objections to
2 the various 30(b)(6) notices that were
3 served on the debtors. Are you familiar
4 with the document that I'm describing?

5 A. No, I don't think I am.

6 **Q. Okay. In any event, you're**
7 **appearing here today pursuant to the Rule**
8 **30(b)(6) notices for the topics for which**
9 **you've been designated on Finke-2 and**
10 **subject to whatever objections were**
11 **asserted by the debtors, correct?**

12 A. Correct.

13 MR. BROWN: Okay. We don't
14 have a document, but my
15 recollection of the objections was
16 that there was an objection to this
17 witness testifying about any Plan
18 negotiations or draft Plan
19 documents. Is that right, Barbara?

20 MS. HARDING: That's
21 correct.

22 MR. BROWN: Okay. At Mr.
23 Lockwood's deposition we reached an
24 agreement that we wouldn't go down

1 MR. BROWN: That is
2 correct, and I believe the document
3 that we don't have, the objections
4 to the 30(b)(6)'s, if I recall
5 correctly, had a paragraph setting
6 forth that objection and a number
7 of different decisions by Judge
8 Fitzgerald in other cases.

9 MS. HARDING: That's
10 correct, and it relates -- our
11 objection relates to the -- to the
12 relevance to the extent that the
13 questions seek information relating
14 to settlement negotiations,
15 drafting --

16 MR. COHN: The
17 clarification that I thought that I
18 made earlier that I'll make clear
19 is still the clarification that
20 this is a relevance objection, or
21 are you asserting a privilege?

22 MS. HARDING: Well, I
23 disagree with that
24 characterization. The objection is

Page 22

C1

Page 24

1 set out in our official objection
2 to the 30(b)(6) notices which is
3 filed on record. It includes
4 attorney-client privilege, it
5 includes work product, it includes
6 joint interest privilege. I don't
7 have it in front of me so I can't
8 recite them, but it includes much
9 more than relevance so --

10 MR. COHN: Just to be
11 clear, because --

12 MS. HARDING: With respect
13 to negotiations, you can -- there
14 will be other objections other than
15 just relevance, so --

16 MR. COHN: Well, but my
17 understanding was there was a
18 blanket instruction not to answer
19 without any attempt to parse
20 through potential privilege
21 objections on the basis of a
22 blanket relevance objection. Am I
23 missing something?

24 MS. HARDING: I don't

Page 23

C1

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1 disagree with that, but I think
2 that in light of the blanket
3 relevance objection with respect to
4 negotiations that there was that
5 agreement reached. That doesn't
6 mean that with respect to
7 everything that might fall under
8 negotiations that there wouldn't be
9 other objections as well.

10 MR. COHN: I'm not
11 suggesting that --

12 MS. HARDING: Okay.

13 MR. COHN: -- if there's a
14 valid privilege objection here that
15 you've somehow waived your right to
16 assert that by asserting a blanket
17 objection, but my understanding is
18 we didn't start down that path
19 because there was a relevance
20 objection.

21 I'm sorry, Michael.

22 MR. BROWN: That's all
23 right. Suffice it to say that if
24 we ask questions concerning the

1 negotiations of the Plan or the
2 draft Plan documents that that will
3 draw an instruction not to
4 answer.

5 MS. HARDING: That's
6 correct.

7 MR. BROWN: Okay, thank
8 you.

9 (SEC Form 8-K marked for
10 identification as Exhibit
11 Finke-3.)

12 BY MR. BROWN:

13 Q. Mr. Finke, you have before
14 you now another document that has been
15 marked for this deposition as Finke-3.
16 You'll note that there is a prior
17 deposition exhibit number on there, Number
18 12, and that was from your deposition as a
19 fact witness. Do you see that?

20 A. Yes, I do.

21 Q. We obviously had some
22 questioning about this at your prior
23 deposition but that was not in your
24 capacity as a designee for Grace and I

1 have some additional questions. So the
2 first one is: Can you identify the
3 document?

4 A. Yes. This is a Form 8-K
5 report that was filed by W.R. Grace with
6 the Securities and Exchange Commission on
7 April 6, 2008.

8 Q. And the document has a
9 couple of attachments, correct?

10 A. Yes.

11 Q. What are they?

12 A. Let's see. The first
13 attachment is, in essence, a press release
14 in which Grace announced the -- its
15 settlement of asbestos personal injury
16 claims in the context of the Chapter 11
17 cases and the second attachment is a term
18 sheet for resolution of asbestos personal
19 injury claims.

20 Q. And was the press release
21 actually issued?

22 A. I do not know.

23 Q. Okay. If it was issued,
24 was it issued on or about the time that

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PP's Obj:
R; BE; F

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CI

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PP's
Obj:
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BE;
F

1 this document was filed, to your
2 knowledge?

3 A. Yes.

4 **Q. Let's focus on the term**
5 **sheet. Who are the parties to the term**
6 **sheet?**

7 A. The debtors, the Official
8 Equity Security Committee, the Official
9 Committee of Personal Injury Claimants and
10 the Future Claimants' Representative.

11 **Q. And what is the date of the**
12 **term sheet?**

13 A. April 6, 2008.

14 **Q. I want you to focus now on**
15 **the period -- for purposes of my next**
16 **series of questions -- the period prior to**
17 **April 6, 2008. And am I correct that**
18 **prior to April 6, 2008 that Grace did not**
19 **consult with any of its insurers**
20 **concerning the terms that appear in this**
21 **term sheet?**

22 MS. HARDING: I'm going to
23 object to the extent that it seems
24 to me that this is going right into

1 we're here to do that.

2 We're not here to talk
3 about and have the witness testify
4 about how it was negotiated, how it
5 came about, the prior drafts, who
6 was consulted, who wasn't
7 consulted, and all that. I don't
8 think that's the proper scope of
9 this deposition.

10 MR. BROWN: I'm not asking
11 who was consulted. I'm asking him
12 whether the insurers -- I'm asking
13 him to affirm that the insurers
14 were not consulted.

15 MS. HARDING: Right. But
16 the problem with that is if we
17 answer that question, then we have
18 opened the door to answering that
19 question with respect to any party
20 and I think that that's not the
21 proper subject of this
22 deposition.

23 MR. BROWN: I can assure
24 you the only one I'm going to ask

CI

PP's Obj:
R; BE; F

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1 the issue of negotiations and
2 settlement negotiations with
3 respect to the Plan. I thought we
4 weren't going to go there.

5 MR. COHN: I think there
6 was no -- if there was no contact,
7 how are we going into that?

8 MR. BROWN: Yeah, we ought
9 to see what his answer is. I'm not
10 asking him about negotiations with
11 the parties that signed the term
12 sheet. I'm asking about whether
13 Grace consulted with any of its
14 insurers concerning the terms of
15 the term sheet prior to executing
16 it.

17 MS. HARDING: First of all,
18 I'm going to object. I think that
19 the -- this is not a topic of the
20 30(b)(6) notice and we're prepared
21 to answer questions about how the
22 Plan operates. I think that that's
23 what Judge Fitzgerald would
24 instruct the debtors to do and

1 about is the insurers.

2 MS. HARDING: Well, I
3 understand that you are, but I
4 don't want to spend any of the time
5 of the seven hours talking about
6 any of the negotiations or what led
7 up to the drafting of the document.
8 We didn't agree to that. It wasn't
9 asked for in the 30(b)(6) topics
10 with respect to how the term sheet
11 came about and so I think that
12 we've got an agreement.

13 If you all want to seek an
14 order compelling us to answer those
15 kinds of questions, then I think
16 you should do that. Otherwise,
17 we're here to talk about how the
18 Plan operates. So --

19 MR. BROWN: I thought you
20 just --

21 MS. HARDING: That's what
22 he's here to answer questions
23 about.

24 MR. BROWN: Are you

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1 instructing him not to answer?

2 MS. HARDING: I'm
3 instructing him not to answer
4 because I think it leads into a
5 series of questions that we all
6 have already agreed is not proper
7 under the current law.

8 MR. COHN: Oh, wait, wait,
9 wait, wait, wait.

10 MR. BROWN: I'm not
11 sure --

12 MS. HARDING: Actually, I
13 understand that you don't agree
14 with the law, but we've agreed for
15 purposes of this deposition that we
16 weren't going to do that.

17 MR. BROWN: I don't know
18 that we agreed to any such thing.
19 I asked the same series of
20 questions of Mr. Lockwood. I don't
21 know if you were at his deposition
22 or not --

23 MS. HARDING: I was.

24 MR. BROWN: -- but he

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1 answered those questions and he
2 left open in his answers about
3 whether Grace had discussed with
4 its insurers these topics and
5 that's why I'm asking these
6 questions. It was perfectly fine
7 when I asked them of Mr. Lockwood;
8 he answered them and so should this
9 witness.

10 MS. HARDING: Well, I
11 believe that I objected and I
12 wasn't the person defending Mr.
13 Lockwood. And Mr. Lockwood --
14 that's between him and his counsel.
15 I'm Mr. Finke's counsel. I'm
16 instructing Mr. Finke not to answer
17 questions relating to how the
18 settlement -- how the term sheet,
19 the Plan or any of the documents
20 related to it were drafted or put
21 together and who was consulted and
22 who wasn't consulted and how that
23 came about.

24 MR. COHN: On the basis of

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1 relevance?

2 MS. HARDING: I think
3 that's an appropriate scope of the
4 objection.

5 MR. COHN: On the basis of
6 relevance?

7 MS. HARDING: On the basis
8 of all of the objections that were
9 stated in our objection to the
10 30(b)(6) notice --

11 MR. COHN: No, I want you
12 to state on the record --

13 MS. HARDING: Let me
14 finish.

15 MR. COHN: -- here and now
16 what the basis for a yes or no
17 question of whether or not people
18 were consulted. If there was no
19 communication, there's no arguable
20 privilege and I want the basis now
21 because I think we are going to
22 litigate this.

23 MS. HARDING: Well, I
24 think --

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1 MR. BROWN: I think I have
2 the floor on this, but thank you,
3 Jack.

4 I think we have a
5 disconnect between what constitutes
6 negotiations. I'm not asking him
7 about how this was negotiated
8 between these parties. I
9 understand your position on that.
10 I'm simply asking whether Grace
11 consulted with its insurers with
12 regard to any term that appears in
13 the term sheet prior to executing
14 it on April 6, 2008. I don't think
15 that gets into negotiations at all.
16 In point of fact, I suspect he's
17 going to say no, in which case it
18 doesn't involve negotiations at
19 all.

20 MS. HARDING: Well, I
21 suggest this: I think that the
22 question "did you negotiate with
23 anyone" gets into that question.

24 MR. BROWN: That wasn't the

PP's
CtrPP's
Ctr

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1 question.

2 MS. HARDING: Well, by
3 asking him -- I think it does. I
4 think we disagree about that. I
5 think why don't we move forward.
6 At a break I'm happy to talk about
7 it further but right now I'm
8 instructing him not to answer the
9 questions.

10 MR. BROWN: Well, I'll ask
11 a series --

12 MR. LEWIS: Hold on just a
13 second. My name is Tom Lewis. I
14 represent the Libby claimants, and
15 I've never seen a deposition like
16 this. I'm in practice 30 some
17 years.

18 I thought the examiner
19 makes a question and if there's an
20 objection, the objection is stated
21 clearly as to that particular
22 question and we don't sit here and
23 debate for 15 or 20 minutes whether
24 the question should be answered.

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1 I think we should proceed
2 in a proper question and answer
3 proceeding here or we're never
4 going to get done and we're going
5 to have an impossible record.

6 So I object to the form of
7 the examination and the failure of
8 counsel for this witness to make a
9 proper objection on the record of
10 this deposition and I join in the
11 objection that this gentleman to my
12 right --

13 MR. COHN: Mr. Cohn.

14 MR. LEWIS: Thank you.

15 MS. HARDING: I think I've
16 stated the objection very clearly
17 and I instruct the witness not to
18 answer.

19 MR. LEWIS: I disagree with
20 that. I have not heard an
21 objection on the record of this
22 deposition.

23 MS. HARDING: The objection
24 is relevance. It's not relevant

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1 under 408. The objection
2 relates -- the rules of the
3 bankruptcy law do not require the
4 debtors to answer questions
5 relating to Plan negotiations and
6 settlement with respect to their
7 Plan and attorney-client privilege,
8 work product and joint interest
9 privilege.

10 MR. BROWN: Okay.

11 MR. COHN: Wait, I'm sorry.
12 I don't mean to -- I would like to
13 know with whom you assert a common
14 interest exists.

15 MS. HARDING: You know
16 what? My objection's on the record
17 and I'm not stating any more. I've
18 instructed the witness not to
19 answer and I think we should move
20 forward.

21 MR. BROWN: I think we
22 should, too, and I'm going to say
23 for purposes of stating your
24 objections to this series of

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1 questions let's just use the
2 shorthand, you know, same as before
3 so that we don't have to repeat
4 it.

5 BY MR. BROWN:

6 **Q. Mr. Finke, I'm correct, am**
7 **I not, that prior to signing this term**
8 **sheet that we've been discussing that**
9 **Grace did not obtain the consent of any of**
10 **its insurers with respect to any of the**
11 **terms in the term sheet?**

12 MS. HARDING: Same
13 objection. Instruct the witness
14 not to answer.

15 **Q. Why did Grace exclude its**
16 **insurers?**

17 MS. HARDING: Same
18 objection. Instruct the witness
19 not to answer.

20 **Q. The initial Joint Plan, Mr.**
21 **Finke, was filed on September 19th, 2008,**
22 **correct?**

23 A. I believe that's correct.

24 **Q. Okay. And it included, did**

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ctr

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1 **it not, the initial version of the**
 2 **Asbestos PI Trust agreement and the**
 3 **Asbestos PI TDP?**

4 MS. HARDING: I'm sorry,
 5 Mike, can you repeat the question?
 6 I'm sorry.

7 (The reporter reads the
 8 pending question.)

9 MS. HARDING: And "it" was
 10 the --

11 MR. BROWN: The Plan.

12 MS. HARDING: Thank you,
 13 okay.

14 A. I don't recall which
 15 documents were -- or exhibits were filed
 16 with the Plan.

17 **Q. Okay. Do you know whether**
 18 **a press release was issued by Grace in**
 19 **conjunction with the filing of the initial**
 20 **Plan in September of 2008?**

21 A. I don't recall.

22 **Q. Am I correct that in the**
 23 **period between April 6, 2008 and September**
 24 **19th, 2008 that the Plan proponents were**

1 **engaged in negotiating the terms of the**
 2 **plan and drafting Plan documents?**

3 A. Yes.

4 **Q. Okay. In that time frame,**
 5 **did Grace consult with any of its insurers**
 6 **concerning the terms of the Joint Plan or**
 7 **any of the Plan documents?**

8 MS. HARDING: Same
 9 objection. Instruct the witness
 10 not to answer.

11 **Q. In that time frame, did**
 12 **Grace obtain the consent of any of its**
 13 **insurers with respect to any of the terms**
 14 **in the Plan or the Plan documents?**

15 MS. HARDING: Same
 16 objection. Instruct the witness
 17 not to answer.

18 MR. BROWN: Okay. Let's
 19 mark another exhibit. The next
 20 document we're going to mark is
 21 Exhibit 6 to the Exhibit Book which
 22 is the asbestos insurance transfer
 23 agreement, and by convention I
 24 brought one copy to be marked and

1 one for counsel.

2 MS. HARDING: Thank you.

3 (Exhibit 6 to Exhibit Book,

4 Asbestos Insurance Transfer

5 Agreement, marked for

6 identification as Exhibit

7 Finke-4.)

8 BY MR. BROWN:

9 **Q. Mr. Finke, you have before**
 10 **you the document marked as Finke-4. Can**
 11 **you identify the document for me,**
 12 **please?**

13 A. This is the proposed
 14 asbestos transfer agreement also referred
 15 to as Exhibit 6 to the Exhibit Book.

16 **Q. And what is your**
 17 **understanding as to what this document**
 18 **accomplishes?**

19 A. It is --

20 MS. HARDING: Object to
 21 form but --

22 A. It is intended once it is
 23 signed to transfer the asbestos insurance
 24 rights to the Asbestos PI Trust.

1 **Q. Okay. It has a -- it has a**
 2 **few schedules. Look at Schedule 1, if you**
 3 **will, and can you just identify what**
 4 **Schedule 1 is?**

5 A. Schedule 1 is a, I think,
 6 20-page list of primary and excess
 7 insurance policies that were or are
 8 applicable to asbestos-related claims.

9 **Q. And who is the insured**
 10 **under those policies?**

11 A. My understanding is that
 12 the insured under the policies would be
 13 one or more of the debtors in these
 14 Chapter 11 cases. I don't recall if a
 15 non-debtor affiliate would have been an
 16 insured under any of these. I'd have to
 17 check on that.

18 **Q. By non-debtor affiliate,**
 19 **who were you -- what entities or**
 20 **individual are you thinking of?**

21 A. Any Grace-affiliated entity
 22 that is not a debtor.

23 **Q. Okay. Who owns the**
 24 **policies at this point?**

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1 A. The debtors, or the -- I
2 should say the insurance contributors.

3 **Q. And that includes the**
4 **debtors?**

5 A. Debtors, and I believe the
6 non- -- I believe that the non-debtor
7 affiliates as well.

8 **Q. And I think they are**
9 **described somewhere. I think Mr. Lockwood**
10 **told us they were.**

11 A. Who are you referring to
12 when you say "they"?

13 **Q. The non-debtor affiliates.**

14 A. They are listed on an
15 exhibit.

16 **Q. You're right, there was**
17 **another exhibit that had that.**

18 A. The number of which I don't
19 recall offhand.

20 MS. ALCABES: Exhibit 16.

21 MR. BROWN: Oh, yes,
22 Exhibit 16.

23 **Q. Exhibit 16 to the Exhibit**
24 **Book?**

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1 A. Correct.

2 MR. BROWN: Okay. I'm not
3 going to bother marking that.

4 **Q. If the Joint Plan is**
5 **confirmed and if the asbestos insurance**
6 **transfer agreement is executed as**
7 **contemplated by the Joint Plan, who are or**
8 **will be the insureds under the policies on**
9 **Schedule 1?**

10 MS. HARDING: Object to
11 form.

12 MR. LIESEMER: Join.

13 MS. HARDING: And also
14 object to the extent it calls for
15 speculation and a legal conclusion
16 as well.

17 A. My understanding is that
18 the named insureds would remain the same
19 as they currently are but that the rights
20 and interests in the policies themselves
21 are transferred to the PI Trust.

22 **Q. Who will be the owner of**
23 **the policies?**

24 MS. HARDING: Same

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1 objections.

2 MR. LIESEMER: Object to
3 the form.

4 A. Again, I'm not an insurance
5 attorney but I believe -- since the
6 policies themselves are not being
7 assigned, I believe the ownership of the
8 policies does not change.

9 **Q. Are you familiar with the**
10 **basic responsibilities of an insured under**
11 **a general liability insurance policy?**

12 MR. LIESEMER: Object to
13 the form.

14 MS. HARDING: Object to the
15 form in terms of basic.

16 MR. BROWN: Well, let me
17 rephrase it.

18 **Q. Are you familiar with any**
19 **of the responsibilities of an insured**
20 **under a standard general liability**
21 **policy?**

22 MS. HARDING: Object to
23 form as to foundation but...

24 A. Yes.

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1 **Q. Why don't you tell me which**
2 **ones you're familiar with?**

3 A. There's an obligation to
4 provide notice to the insurer of a claim
5 or an event that gives rise to a claim, an
6 obligation to provide relevant
7 documentation in support of a claim under
8 a policy. Offhand, I can't think of any
9 other specific obligations.

10 **Q. Have you heard of the duty**
11 **to cooperate under the policy?**

12 MS. HARDING: Object to
13 form. It assumes facts not in
14 evidence. With respect to what
15 policy? There are hundreds of
16 different insurance policies.

17 MR. BROWN: Yes, there are,
18 and I'm asking him just about
19 general provisions in a general
20 liability policy.

21 **Q. Are you familiar with the**
22 **concept of the duty to cooperate on the**
23 **part of an insured under a general**
24 **liability insurance policy?**

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1 MS. HARDING: Again object
2 to form.

3 MR. LIESEMER: Join in that
4 objection.

5 MS. HARDING: And
6 foundation.

7 A. Yes.

8 **Q. Okay. Are you familiar**
9 **with the right to defend or to associate**
10 **in the defense of claims under a general**
11 **liability policy?**

12 MS. HARDING: Same
13 objection.

14 MR. LIESEMER: Object to
15 the form.

16 A. No, I'm not.

17 **Q. Let me ask you a**
18 **different -- to your knowledge, does Grace**
19 **have any duties to the insurers listed on**
20 **Schedule 1 of the transfer agreement?**

21 MS. HARDING: Object to the
22 form.

23 MR. LIESEMER: Object to
24 the form.

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1 A. Does Grace currently have
2 any duties? Is that the question?

3 **Q. Well, let's break it up.**

4 **Let's say: Did Grace pre-petition have**
5 **any duties to the insurers listed on**
6 **Schedule 1?**

7 MS. HARDING: Same
8 objection.

9 A. Whatever -- whatever duties
10 and obligations are spelled out in the
11 policy, yes.

12 **Q. Okay. If the Plan is**
13 **confirmed, what happens to those duties**
14 **and obligations?**

15 MR. LIESEMER: Object to
16 the form.

17 MS. HARDING: Same
18 objection. And I am going to
19 object, I think, to -- are you --
20 what particular -- are you talking
21 about any particular policy or with
22 respect to all of the policies
23 listed in the exhibit or -- object
24 to the form.

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1 MR. BROWN: Okay.

2 MS. HARDING: I don't see
3 how he could answer that question
4 with respect to all policies.

5 A. The duties and obligations
6 are still owed to the insurance companies
7 since the Plan is intended to be
8 insurance-neutral. I don't have an answer
9 as to specific duties in terms of whether
10 the PI Trust has a given duty and
11 obligation or whether that given duty or
12 obligation remains with a Grace entity. I
13 think it would depend on the nature of the
14 duty or obligation.

15 **Q. Okay. How about the duty**
16 **to cooperate in the defense of a claim?**

17 MS. HARDING: Same
18 objection as before.

19 MR. LIESEMER: Join.

20 **Q. Is that a duty that would**
21 **remain with the reorganized debtors or is**
22 **that a duty that would be assumed by the**
23 **Trust or both or something different?**

24 A. I don't -- I don't know the

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1 answer to that because I'm not aware of
2 any attempt or effort by either Grace or
3 the ACC or the FCR to try to parse out
4 specific duties, obligations, et cetera
5 under the policies since it is the intent
6 of the joint co-proponents that the Plan
7 and the transfer of insurance rights be
8 insurance-neutral aside from, you know,
9 the fact of the assignment that it has
10 not -- that no one -- none of the
11 co-proponents have felt it necessary to
12 engage in that effort.

13 **Q. Under the Joint Plan, is**
14 **the Asbestos PI Trust the successor to the**
15 **debtors with respect to asbestos-related**
16 **liabilities?**

17 MR. LIESEMER: Object to
18 form.

19 MS. HARDING: Object to
20 form.

21 MR. BROWN: Let me rephrase
22 that.

23 **Q. With respect to -- well,**
24 **back up.**

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1 A. No, no, I'm not aware of
2 any general claims. I'm not aware of any
3 claims that I could identify with respect
4 to any given insurer.

5 MR. BROWN: Let's mark the
6 next exhibit, which will be the
7 Asbestos PI Trust agreement.
8 (Exhibit 2 to Exhibit Book,
9 Asbestos PI Trust Agreement marked
10 for identification as Exhibit
11 Finke-6.)

12 (Exhibit 4 to Exhibit Book,
13 Trust Distribution Procedures,
14 marked for identification as
15 Exhibit Finke-7.)

16 BY MR. BROWN:

17 **Q. Okay. Mr. Finke, you have**
18 **before you Exhibits 6 and 7. Exhibit 6 --**
19 **well, why don't you tell me if you can**
20 **identify both of those documents?**

21 A. Exhibit 6 is the Asbestos
22 PI Trust agreement. I should say the
23 proposed Asbestos PI Trust agreement that
24 is also known as Exhibit 2 to the Exhibit

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1 Book. Finke Exhibit 7 is the Trust
2 Distribution Procedures relevant to the
3 Asbestos PI Trust and also known as
4 Exhibit 4 to the Exhibit Book.

5 **Q. Okay. What role, if any,**
6 **do either of those two documents**
7 **contemplate for Grace's insurers in the**
8 **handling, resolution, settlement, defense**
9 **of asbestos claims asserted against or**
10 **submitted to the Trust?**

11 MS. HARDING: Object to the
12 form.

13 MR. LIESEMER: Object to
14 the form.

15 MS. HARDING: Could you
16 read back the question, please?

17 (The reporter reads the
18 pending question.)

19 MS. HARDING: Okay, and I
20 object to it as being overly broad
21 with respect to Grace's insurers
22 without reference to any particular
23 insurer or policy. And, Michael,
24 do you have -- are you asking him

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1 to look at a specific provision of
2 the policy or...

3 MR. BROWN: I'm just asking
4 the question I asked.

5 A. I don't know the answer to
6 your question. I'm not that familiar with
7 the two agreements to know whether these
8 two documents set forth the role of the
9 asbestos insurers with respect to the
10 handling, settlement, resolution, payment,
11 et cetera of asbestos PI claims.

12 In general, the Plan includes the
13 asbestos insurance coverage that is
14 transferred to the Trust to be available
15 to either pay asbestos PI claims or
16 reimburse the PI Trust for its payment of
17 claims. Sitting here today, I just -- I
18 do not recall to what extent, if any,
19 these two documents contain provisions
20 that relate to that role.

21 **Q. Let me broaden the scope of**
22 **the question to not just these two**
23 **documents but the Plan or any of the Plan**
24 **documents. Would that change your**

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1 answer?

2 MS. HARDING: Object to
3 form.

4 MR. LIESEMER: Join.

5 A. I thought I just answered
6 that question so maybe I don't understand
7 the question.

8 **Q. Well, my initial question**
9 **to you focused on the two documents, the**
10 **Trust agreement and the asbestos PI TDP.**
11 **I'm asking the question more broadly now.**

12 **If you look at the Plan -- at all**
13 **the Plan documents, do any of them**
14 **contemplate any role for Grace's insurers**
15 **in the handling, defense, resolution, of**
16 **any asbestos PI claim submitted to the**
17 **asbestos PI Trust for resolution?**

18 MS. HARDING: Object to
19 form. I think it's overly broad.
20 And by Plan, do you mean all of the
21 exhibits, including all of the
22 documents and policies listed in
23 exhibits?

24 MR. BROWN: I'm using the

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term "Plan" and "Plan documents" as defined in the Plan.

MR. LIESEMER: Object to the form of the question.

A. The Plan certainly contains provisions that posit a role for the asbestos insurers to act as a source of funds for payment of asbestos PI claims and reimbursement of asbestos PI claims paid by the Trust. In terms of the insurers' role in handling or defense, et cetera, of -- in connection with asbestos PI claims, it is my understanding that the insurers' role is whatever it is under the policies and that that role is -- remains the same notwithstanding the transfer of the asbestos insurance rights to the Trust.

Q. Would you look at pages 43 and 44 of the Trust agreement, which I think is 6.

A. Yes.

MS. HARDING: 43, did you say? What page?

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MR. BROWN: Yes. Bear with me one second here.

THE WITNESS: 43 and 44.

MR. BROWN: 43 and 44, yes.

Q. Do you see on pages 43 and 44 there are some gentlemen listed as members of the TAC?

A. Yes.

Q. Do you know any of those gentlemen?

A. I have met Mr. Cooney, Mr. Rice and Mr. Weitz. I have not had much contact with them, though.

Q. What do you understand to be their professional background, the three you met?

A. They are attorneys. They have represented asbestos personal injury plaintiffs in litigation against Grace and other defendants.

Q. Do you have any idea as to how many claims each of these gentlemen's firms has asserted on behalf of claimants against Grace?

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MR. LIESEMER: Object to the form of the question.

A. No.

MS. HARDING: You're asking him personally? Is that what you mean, personally? I mean, W.R. -- well, you ask him.

Q. Do you know whether -- let's try it a different way.

Mr. Cooney. Mr. Cooney is with the firm of Cooney & Conway, correct?

A. That's my understanding, yes.

Q. How many clients does Cooney & Conway have with asbestos claims against Grace, to your knowledge?

MR. LIESEMER: Object to the form.

MS. HARDING: Objection just because of the relevance, but go on.

A. I don't know.

Q. Would your answer be the same for the other gentlemen?

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A. Yes.

Q. The TAC members, there's four individuals listed there. They were selected by the ACC, correct?

A. That is my understanding, yes.

Q. And the ACC is made up of a collection of asbestos personal injury claimants, the actual committee, correct?

MS. HARDING: Object to the form.

A. That is my understanding.

Q. Is it your understanding that those individual asbestos claimants delegate their responsibilities as ACC members to their personal injury counsel?

A. It's my understanding that their counsel often act on the claimants' behalf in connection with the business of the ACC.

Q. Okay.

A. Whether there's any

PP's Obj:
R; BE; F

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C1

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delegation, I wouldn't know.

Q. Okay. Does each of the firms that's listed on pages 43 and 44 -- just for the record, Baron & Budd, PC; Cooney & Conway; Motley Rice, LLC and Weitz & Luxenberg -- do each of those firms have a client who's a member of the ACC?

A. I don't recall.

Q. What do you understand to be the role of the asbestos PI T-A-C, or TAC, in connection with the Asbestos PI Trust?

MS. HARDING: Object to the form of the question.

A. To provide advice to the Trust with respect to the matters set forth in the Trust agreement and the TDP.

Q. Do they owe any fiduciary duties to -- in their role as members of the TAC?

MS. HARDING: Objection to form.

MR. LIESEMER: Object to form.

MS. HARDING: Calls for a legal conclusion.

A. I don't know. Offhand, I could look it up in the documents to see if the documents ascribe such a duty to them.

Q. Why don't you look at Section 5.2.

A. Of which?

Q. The Trust agreement.

MS. HARDING: So Exhibit 2 of the Plan but Exhibit 6?

MR. BROWN: Correct.

THE WITNESS: Finke Exhibit 6.

Q. Does Section 5.2 refresh your recollection as to whether the members of the TAC have any fiduciary duties in connection with their role as TAC members?

A. Yes.

Q. Okay. And they do,

correct?

A. Yeah, well, specifically Section 5.2 states that "the members of the TAC shall serve in a fiduciary capacity representing all holders of present PI Trust claims."

Q. Okay. Do you have any further understanding as to what the nature of the fiduciary duties is that they owe to all holders of present PI Trust claims?

MS. HARDING: Object to form.

A. I'm afraid I do not understand your question.

Q. I'll try to rephrase it then.

What are the fiduciary duties that the TAC members owe to holders of PI Trust claims?

MR. LIESEMER: Object to form.

MS. HARDING: Same objection.

MR. LEWIS: I object as to foundation.

A. I am not able to identify specific duties. As a fiduciary they're obligated to act in the best interests of the holders of present PI Trust claims.

Q. And when you say holders, you mean all holders of present --

A. Yes.

Q. -- PI Trust claims?

A. Yes.

Q. And all holders includes holders of PI Trust claims that are not clients of TAC members' respective law firms, correct?

A. It includes them, yes.

Q. Now, in the role of personal injury counsel for their individual clients, they have a separate set of fiduciary duties, correct?

MS. HARDING: Object to form and also calls for a legal conclusion and outside the scope of the designation of this 30(b)(6)

PP's Obj:
R; BE; F

PP's Ctr

PP's Obj:
R; BE; FPP's Obj:
R; BE; F

PP's Ctr

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1 witness, I believe, but...

2 MR. LIESEMER: Join in the
3 objections.

4 THE WITNESS: I'm sorry.
5 Can you read the question again?

6 (The reporter reads the
7 pending question.)

8 A. They have fiduciary
9 obligations to their clients, yes.

10 Q. Okay. And to your
11 knowledge, do those fiduciary duties
12 differ from -- that is, the duties that
13 they owe to their respective clients --
14 differ from the fiduciary duties that each
15 of these TAC members has in their role as
16 a TAC member?

17 MR. LIESEMER: Objection to
18 form.

19 MS. HARDING: Same
20 objection as I had to the previous
21 question.

22 A. In general, they owe the
23 same obligation to fulfill the role of a
24 fiduciary, which is to act in the best

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1 interests of their clients. Whether there
2 are specific duties in their role as TAC
3 members that are different from specific
4 duties in their role as counsel
5 representing their clients, I don't
6 know.

7 Q. Do you have an
8 understanding as to how the TAC members
9 will deal with the situation where the
10 best interests of their individual clients
11 differs from the best interest of all
12 holders of present PI Trust claims?

13 MS. HARDING: Object to
14 form.

15 MR. LIESEMER: Objection to
16 form.

17 MS. HARDING: Calls for
18 speculation.

19 A. I don't know.

20 Q. Is there any mechanism in
21 any of the Plan documents, to your
22 knowledge, that addresses that issue?

23 MS. HARDING: Object to
24 form.

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1 A. I am not aware of any.

2 Q. Okay. Now, you're familiar
3 with the term "PI Trust claims" as it's
4 used in the Trust agreement, correct?

5 MR. LIESEMER: Objection to
6 form.

7 A. Yes, I am.

8 Q. And if you look at Footnote
9 1 to the Trust agreement, if you would,
10 Footnote 1 says that what is defined as
11 asbestos PI claims in the plan will be
12 referred to as PI Trust claims in the
13 Trust agreement, correct?

14 A. Yes.

15 Q. And are you familiar with
16 the scope of the defined term "asbestos PI
17 claims" as it appears in the Plan?

18 A. Yes.

19 Q. I'm correct, am I not, that
20 it includes the term "indirect PI Trust
21 claim"?

22 A. Yes.

23 Q. So based on that
24 definitional connection, is it fair to say

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1 that Mr. Weitz, Mr. Cooney, Mr. Budd
2 and -- I missed someone -- Mr. Budd, Mr.
3 Cooney, Mr. Rice and Mr. Weitz are
4 fiduciaries to the holders of indirect PI
5 Trust claims?

6 MS. HARDING: Object to
7 form.

8 MR. LIESEMER: Join in the
9 objection.

10 A. I believe that to be
11 correct.

12 Q. Are you generally familiar
13 with my client, OneBeacon's, contractual
14 indemnity claims?

15 A. No.

16 Q. Okay, we'll get to that
17 later then.

18 MR. BROWN: Let's mark this
19 next.

20 (First Amended Joint Plan
21 of Reorganization marked for
22 identification as Exhibit
23 Finke-8.)

24 Q. Mr. Finke, you have before

PP's Obj:
R; BE

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you now what has been marked as Exhibit 8 to this deposition and what is Exhibit 1 to the Exhibit Book. First question is: Would you identify the document, please?

A. Yes. I think Exhibit 8 is the First Amended Joint Plan of Reorganization that was filed by Grace and its co-proponents.

Q. Okay.

A. And the date is February -- date on the document is February 27, 2009.

Q. Okay. Have you reviewed this document in its entirety?

A. Yes.

Q. How many times?

MS. HARDING: You mean in its entirety how many times?

MR. BROWN: Well, let's start-up with that question.

A. Interpreting review as meaning a detailed word-for-word reading of the entire document, I would say once.

MS. HARDING: No, it's not.

MR. BROWN: Okay. It's just --

MS. HARDING: It's just an objection that...

A. I'm sure that I do not understand the annex or annexes that I believe relate to tax issues.

MS. HARDING: I guess -- are you asking him in his personal capacity?

MR. BROWN: I don't think he's here in his personal capacity. I think he's here in his capacity as a designee for W.R. Grace or for the debtors.

MS. HARDING: Okay. Are you asking him if there's anybody at W.R. Grace that has an understanding of different provisions of the Plan as lawyers and --

MR. BROWN: I think he's

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Q. Okay. And how many times have you partially reviewed the document?

A. Many times.

Q. Okay. Do you understand it?

A. I have an understanding of it. I would not profess to have a complete understanding of it.

Q. Okay. Are there particular provisions in the Plan that you're quite certain you don't understand?

MS. HARDING: Object to form and relevance and concern that we're not going to the seven hours -- I mean, if you have a specific question about a specific provision that you don't understand as an insured, then I think you should ask him questions about that. I think...

MR. BROWN: Is that an instruction not to answer the question?

here to testify about the operation of the Plan. I think that was -- isn't he? So my question is what --

MS. HARDING: He's here to answer questions to help you understand the Plan.

MR. BROWN: Barbara, can we --

MS. HARDING: So I think if there are questions that you don't understand, I think you should ask him those.

MR. BROWN: I would like to know whether there are particular provisions in the Plan that the witness can identify that he is not familiar with or that he doesn't understand.

MS. HARDING: Well, I think he's asked and answered, so...

A. Yes, for myself there are provisions that I do not understand, such as the tax annexes. This --